

STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

Illinois Commerce Commission)	
On Its Own Motion)	
)	
vs.)	
)	
Central Illinois Light Company)	
Central Illinois Public Services Company)	
Commonwealth Edison Company)	
Illinois Power Company)	
Interstate Power Company)	
MidAmerican Energy Company)	
Mt. Carmel Public Utility Company)	
South Beloit Water, Gas, and Electric)	
Company, and Union Electric Company)	
)	Docket No. 00-0494
Proceeding on the Commission's own motion)	
concerning delivery services tariffs of all Illinois)	
electric utilities to determine what if any)	
changes should be ordered to promote)	
statewide uniformity of delivery services and)	
related tariffed offerings.)	

INITIAL BRIEF
OF
MIDAMERICAN ENERGY COMPANY

COMES NOW, MidAmerican Energy Company (“MidAmerican”) and submits its Initial Brief in the above-captioned proceeding.

I. PROCEDURAL BACKGROUND

On July 11, 2000, the Illinois Commerce Commission (“Commission”) issued its Order initiating this proceeding. The purpose of the proceeding was:

...to provide utilities, customers, RESs and Staff the opportunity to pursue the objective of uniformity of delivery services tariffs through a workshop process, to provide a docketed proceeding for the Commission to investigate whether the currently effective sets of electric utility delivery services tariffs, by virtue of a lack of uniformity, are unjust, unreasonable, discriminatory or preferential, or in any way in violation of any provisions of law, and to determine what if any changes should be ordered in the delivery services tariffs of each Illinois electric utility to render such tariffs just, reasonable and sufficient. [Order at 6].

On October 18, 2000, the Commission issued an Interim Order. The Interim Order approved a Stipulation reached by the parties. The Stipulation identified issues that had been resolved by the parties as a result of workshop discussions, issues that were to be litigated in this case, and issues that were not resolved but which were to be addressed in other proceedings.

On November 3, 2000, MidAmerican filed the Direct Testimony of Charles B. Rea, Manager-Restructuring Opportunity Analysis, and Debra L. Kutsunis, Manager-Customer Choice Initiatives. The purpose of Mr. Rea's Direct Testimony was to sponsor three pro forma delivery service tariffs for consideration by the Commission. The three pro forma delivery service tariffs consisted of a pro forma customer tariff, a pro forma supplier tariff, and a pro forma metering supplier tariff, collectively referred to hereafter as "MidAmerican's pro forma tariffs." The purpose of Ms. Kutsunis' Direct Testimony was to address two single billing option (SBO) issues: whether an RES should be required to bill for amounts owed to the utility for prior bundled services or charges owed to a prior RES, and the posting order of single billing remittances.

On November 21, 2000, MidAmerican filed the Rebuttal Testimony of Mr. Rea and Ms. Kutsunis. On December 5, 2000, MidAmerican filed the Surrebuttal Testimony of Mr. Rea and Ms. Kutsunis. Evidentiary hearings were held in Springfield on

December 12, 13, and 14, 2000. At the conclusion of the hearings, the Record was marked “Heard and Taken.”

II. SUMMARY

This proceeding is not the first time that pro forma tariffs have been considered by the Commission. As MidAmerican witness Rea noted, these issues were initially raised in Docket No. 98-0454 and then again in Docket No. 98-0680, both of which dealt with establishing ground rules and filing requirements for the delivery services tariffs to be filed in April, 1999. The issue of tariff uniformity was also raised in the individual utility delivery service tariff cases conducted throughout the spring and summer of 1999. In the delivery service tariff cases, the Commission recognized the value of uniformity but deferred many of the decisions on uniform tariffs to a later date. Uniformity of tariffs was raised again in Docket No. 99-0013 dealing with the unbundling of metering, billing and customer service functions. The Commission specifically deferred decisions on uniformity in those tariffs to this proceeding. Consequently, MidAmerican believes this is the case in which the Commission should affirmatively decide the uniformity of tariffs/pro forma tariffs issue.

The parties are divided into two camps. The first camp consists of those parties who seek to actively encourage competition in Illinois and who see greater uniformity, including the adoption of pro forma tariffs, as one avenue to achieve that goal. Those parties include MidAmerican, NewEnergy Midwest, L.L.C. (NewEnergy), Illinois Industrial Energy Consumers (IIEC), and the Illinois Commerce Commission Staff (Staff). In the second camp are the remaining incumbent utilities—primarily Com Ed, Illinois Power, Ameren, and CILCO (the “Utilities”) who generally oppose greater

substantive uniformity in delivery services tariffs and who specifically oppose MidAmerican's pro forma tariffs proposal. CILCO opposes any uniform detailed tariff provision and wording proposal. [Tr. 277]. Alliant Energy's position on these issues is less definitive, but it appears Alliant is more receptive to greater uniformity than the other Utilities. [Alliant Ex. 1 at 14]. In response to proposals submitted by MidAmerican and Staff, the Utilities sponsored proposals described as compromise proposals. However, the Utilities' proposals are simply a repackaging of their existing non-uniform tariffs and will do little to promote competition in Illinois.

As Mr. Rea noted, earlier pro forma tariff proposals were either incomplete or piecemeal, or were not presented for consideration on a statewide basis. In contrast, MidAmerican's proposal is complete, comprehensive, and suitable for statewide application. [MidAmerican Ex. No. 1.0 at 6]. Further, the parties now have actual experience in the marketplace.

MidAmerican believes the time to consider pro forma tariffs is now—after some actual experience with the competitive marketplace has been obtained, but before the market is so well developed that the adoption of changes would cause major disruptions. In contrast, Com Ed, and others, believe that additional experience is needed. Com Ed, however, was unable to venture an opinion as to when it believes enough experience would be sufficient; only that it would be some time after 2002. It is apparent Com Ed's approach is to defer greater uniformity as far into the future as possible. Com Ed witness Clair testified that now is a “uniquely bad time” to consider uniform tariffs. [Com Ed Ex. 7.0 at 3]. Com Ed witness Juracek, an officer of Com Ed, testified that Illinois needs more experience with open access “assuming that establishing pro forma tariffs ever will

be a good idea.” [Com Ed Ex. 6.0 at 11]. The key question was posed directly by the Hearing Examiner:

“But if we come back in a year or two years, are we going to be faced with the same ‘We need more time,’ or ‘We need more experience,’ or ‘We didn’t have time,’ or ... [Tr. 713].

MidAmerican submits that is precisely the dilemma. After several inconclusive attempts to address greater uniformity and/or the use of pro forma tariffs as the vehicle to achieve greater uniformity, the Commission and the parties are in the same position now as they were at the time of Docket No. 98-0454. The utilities’ tariffs are not uniform and unless the Commission acts in this docket, there is no assurance or likelihood that the utilities’ tariffs will be any more uniform two or three years from now than they are now.

In stark contrast to Com Ed’s “Not now, perhaps not ever” perspective, is the testimony of Staff witness Schlaf, NewEnergy witness Walsh, and IIEC witness Stephens. Staff witness Dr. Schlaf discussed four options to achieve uniform tariff language, including MidAmerican’s proposal. All four options involve taking action now. It was Staff’s position that uniform tariffs should be in place by the time other factors presently hindering the competitiveness of the Illinois market become less problematic. [Staff Ex. 3.0 at 9]. IIEC witness Stephens testified the reasons for implementing uniform delivery services tariffs today will be the same reasons tomorrow. Mr. Stephens stated that customer understandability, marketer/supplier ease of entrance into the competitive market, and consistent regulation by the Commission are all goals that will not wane with time. [IIEC Ex. 1.0, Revised at 5]. MidAmerican agrees. As Mr. Stephens noted, waiting until all that can be known is known, is a prophecy that will never materialize, and the benefits of uniformity will be foregone in the interim.

The question for the Commission is a simple one—if not greater uniformity NOW, then WHEN? MidAmerican submits the time is NOW.

III. MIDAMERICAN’S PRO FORMA TARIFF PROPOSAL

A. MidAmerican witness Rea sponsored three pro forma delivery service tariffs for consideration by the Commission. MidAmerican proposed those tariffs be templates upon which more uniform delivery service tariffs in Illinois could be patterned.

Specifically, Mr. Rea summarized MidAmerican’s proposal as follows:

MidAmerican recommends the Commission accept these tariffs in this proceeding as the initial or draft pro forma delivery tariffs in Illinois to be used as the starting point for the development of final uniform pro forma delivery tariffs in a proceeding commenced upon the conclusion of this docket. MidAmerican recommends that the Commission open a proceeding following the final order in this docket to allow interested parties the opportunity to negotiate and, if necessary, litigate different terms and conditions to the draft pro forma tariffs with a final order in that proceeding by September 1, 2001. Where different terms and conditions are either negotiated or ordered by the Commission, new pro forma tariffs reflecting those modifications to our proposed starting point would become the uniform pro forma delivery service tariffs in Illinois. Final approval by September 1, 2001 would give utilities and the Commission the opportunity to incorporate any modifications to the pro forma tariffs approved in that proceeding in the individual tariffs applicable to residential customers that must be implemented on or before May 1, 2002. [MidAmerican Ex. 1.0 at 3-4].

MidAmerican has expended considerable effort and resources in creating a set of pro forma tariffs for the parties’ and Commission’s consideration that are reflective of terms and conditions employed by all utilities in Illinois and that can serve as a starting point on a statewide basis. Do the proposed tariffs definitively resolve every conceivable situation? Of course not; nor were they intended to. The flexibility of MidAmerican’s proposal to incorporate utility-specific needs or to adapt to the changing environment is not a weakness of MidAmerican’s proposal; it is one of its greatest strengths.

MidAmerican's proposal brings a level of uniformity to delivery service tariffs in Illinois that is truly substantial while still providing flexibility to utilities in designing and carrying out business processes and practices to administer the provision of delivery services.

IV. ARGUMENTS FOR PRO FORMA TARIFFS

Based on experience in the competitive market, MidAmerican is convinced that the benefits to the marketplace of having delivery service tariffs based on a uniform template outweigh the benefits of not requiring uniformity. Pro forma tariffs would provide that the rules of the marketplace are consistent across the state. Such consistency makes it easier for customers who purchase electricity in multiple delivery service territories to understand the rules of the game on a statewide level and to negotiate contracts for multiple facilities. In addition, suppliers who operate in multiple service territories can more easily develop strategies to offer competitive energy packages to customers on a statewide basis. The Commission also benefits in that it will be better able to interpret and enforce tariff provisions, protect the interests of customers, and foster the growth of competition across Illinois. Uniformity of tariffs will make the market rules easier for all parties to understand and thereby reduce the administrative costs of participating in a market on a statewide basis. [MidAmerican Ex. 1.0 at 6-8].

It is apparent that the Commission also believes there are benefits to achieving greater uniformity. Greater uniformity has been raised by the Commission in several previous proceedings. The parties were directed to investigate uniformity in this proceeding.

It is also apparent that marketers and customers also believe there are benefits to greater uniformity. As noted by NewEnergy witness Walsh, the Commission's October 31, 2000 Report of Chairman's Fall 2000 Roundtable Discussions, Re: Implementation of the Electric Service Customer Choice and Rate Relief Law of 1997, noted that Roundtable participants stated the lack of uniformity between service territories was a potential barrier to competition and that the balkanization of business practices increases customer acquisition costs for competitors and may be discouraging competitive suppliers from entering more than one service territory or even entering the Illinois market at all. [NE Exhibit 1 at 4].

NewEnergy is very concerned about the lack of uniformity regarding terms and conditions of the Illinois utilities' single billing tariffs and the general lack of uniformity regarding terms and conditions of the utilities' customer and supplier tariffs. [NE Ex. No. 1 at 3]. Mr. Walsh testified that a lack of uniformity among certain delivery service tariff provisions and business practices between utility service territories is a major contributing factor in determining whether or not to market retail electric services in more than one utility's service territory. [Ibid. at 5]. Mr. Walsh testified that MidAmerican's pro forma customer and supplier tariffs offer an excellent starting point in the development of uniform customer and supplier tariffs to be used by the Illinois utilities. He further stated the standard definitions that are included in MidAmerican's pro forma customer and supplier tariffs encompass most if not all of the standard definitions that should appear uniformly in the Illinois utilities' tariffs. Mr. Walsh concluded that MidAmerican's pro forma customer and supplier tariffs attempt to provide

a standard structure, organization and section layout. NewEnergy supports MidAmerican's approach. [Ibid. at 18-19].

Mr. Stephens testified on behalf of the Illinois Industrial Energy Consumers (IIEC). The IIEC is a group of large industrial customers taking service from virtually every major electric utility in Illinois. The IIEC believes that uniformity among the Illinois utilities' tariffs, processes, and terms and conditions can facilitate the entrance of new competitors in the market and help enhance competition throughout the State. Furthermore, uniformity among utilities' tariffs, processes, terms and conditions will aid in customer understanding and use. Finally, uniformity in delivery service tariffs promotes consistent regulation by the Commission. [IIEC Ex. 1.0, Revised at 2-3].

Mr. Stephens agreed that the pro forma tariffs offered by MidAmerican form an adequate set of default tariffs on which to base future uniform tariff discussions. [IIEC Ex. 1.0, Revised at 11]. Mr. Stephens further testified that MidAmerican's pro forma tariffs fairly encompass the offering of existing delivery services and that MidAmerican has made exceptions for utilities that have slightly different terms and conditions or provisions. Mr. Stephens concluded that MidAmerican has done an excellent job in developing its proposal in terms of customer understandability and readability.

Dr. Schlaf and Mr. Lazare testified on behalf of the Commission Staff.

Mr. Lazare testified in support of greater uniformity. Specifically, Mr. Lazare proposed a common outline for all delivery services tariffs. Mr. Lazare testified that a common outline would make individual utility tariffs more understandable to suppliers and customers operating in more than one jurisdiction. He further testified a common outline would make the tariffs more understandable to regulators. [Staff Ex. 2 at 5]. Dr. Schlaf

stated that Staff supports the notion of tariff uniformity and testified that each of the tariffs proposed by MidAmerican witness Rea could plausibly serve as template tariffs, or, at the very least, the basis for discussion of template tariffs. Dr. Schlaf further testified that the MidAmerican-proposed pro forma customer and supplier tariffs were consistent with the outline of customer and supplier tariffs proposed by Staff witness Lazare. [Staff Ex. 3 at 9].

V. ARGUMENTS AGAINST PRO FORMA TARIFFS

A. Com Ed's Legal Objections to Pro Forma Tariffs.

1. Com Ed contends that it has the right to file tariffs of its own choosing and that the concept of a pro forma tariff is somehow inconsistent with this right. [E.g., Com Ed Ex. 6.0 at 5-6].

Com Ed is attempting to create a legal issue where there is none. Com Ed can submit whatever tariffs or tariff provisions it chooses, whenever it chooses to do so. MidAmerican's proposal is not inconsistent with this "long-established principle of utility regulation and ratemaking." For example, Com Ed could submit its preferred tariffs as an alternative to MidAmerican's proposed pro forma tariff in the second proceeding under Mr. Rea's proposal. It can do so in the residential delivery services tariffs case soon to follow. As a utility, MidAmerican certainly does not disagree with Com Ed's contention that a utility should have the right to file its own tariffs and tariff provisions, but, no party has a right to have a particular tariff approved by the Commission. The right to file a tariff does not include a right to be free of competing proposals, or to have that tariff be considered by a Commission in the absence of preconceived or predetermined notions of

what that tariff should say. No utility, or party, has the right to dictate policy determinations for the State of Illinois.

2. In his surrebuttal testimony, Com Ed witness Alongi first alleged there was no notice in the Initiating Order in this docket that uniform tariffs would be raised. [Com Ed Ex. 8.0 at 3]. On cross-examination of Staff witness Schlaf, Com Ed attempted to buttress this assertion by discussing a Staff Report suggesting that pro forma tariffs would not be addressed. [Tr. 38]. MidAmerican notes the Staff Report in question was a recommendation to the Commission. The Commission could have included the language suggesting that pro forma tariffs not be addressed in the Initiating Order. Importantly, it did not. MidAmerican thereby concludes the Commission did not intend to preclude or prohibit further investigation into a pro forma tariff.

The Commission did say several things in its Initiating Order. On page 2, the Commission said it would initiate a proceeding to further consider issues related to statewide uniformity; not to begin to consider, but to further consider. Page 5 of the Initiating Order states the Commission will determine at the close of this proceeding if any non-uniform provisions should be made uniform and the resulting changes that should be ordered.

This case is not being conducted in a vacuum. The Initiating Order should be read in the context of the string of cases in Illinois discussing the possibility of a pro forma tariff. MidAmerican suggests that in nearly every case where the idea of uniformity has been raised, the concept of a pro forma tariff has also been raised. The only difference from prior cases is that instead of, once again, only talking about the concept of a statewide pro forma tariff, there is now actually one on the table for the

Commission to consider. Given the past cases and the Commission directive to further consider uniformity, MidAmerican does not think the Commission meant for the parties in this case to waste their time with a “Look, but Don’t Touch” approach. MidAmerican also does not believe the Commission meant to look at further uniformity, but to preclude the most efficient and effective method of achieving tariff uniformity; namely a pro forma tariff proposal.

MidAmerican was upfront about its proposal—it was filed at the outset of this case with MidAmerican’s Direct Testimony on November 3. MidAmerican did not wait until the Rebuttal Testimony or Surrebuttal Testimony rounds. MidAmerican’s proposal has been considered in two rounds of testimony in this case, and was extensively analyzed by Com Ed. Finally, MidAmerican notes the same Com Ed witness who argued that Com Ed was prejudiced by a lack of notice that uniform tariffs would be an issue in this proceeding made a significant and positive contribution to the ultimate development of pro forma tariffs. Mr. Alongi reviewed MidAmerican’s proposed pro forma tariffs and submitted 44 pages of criticisms and comments with his rebuttal testimony [Com Ed Ex.4.3, 4.4, and 4.5]. MidAmerican witness Rea readily agreed that Mr. Alongi’s comments were helpful [Tr. 341]. Indeed, MidAmerican welcomes the parties’ comprehensive and critical analyses and believes that such analyses are a crucial part of achieving the best final pro forma tariff possible.

MidAmerican thinks the Initiating Order does have the flexibility to examine a real-life pro forma tariff in this case as proposed by Mr. Rea—and that the Commission wants the parties to do so. MidAmerican does not think the Commission should be

deprived of the opportunity to decide if a pro forma tariff is the appropriate vehicle to achieve tariff uniformity in Illinois.

B. Other Objections to MidAmerican's Proposal.

1. MidAmerican is not Imposing its Tariff on Illinois.

It was not MidAmerican's intention to file MidAmerican's existing DSTs, or Com Ed's DSTs, or any other utility's DSTs, as the pro forma tariff. The point was to file a set of DSTs that could serve as the basis for all utilities' DSTs. As MidAmerican witness Rea explained, MidAmerican's proposed pro forma tariffs used MidAmerican's DSTs as a starting point, but borrowed liberally from other utilities' DSTs and acknowledged pertinent Commission decisions.

The fact that MidAmerican's proposed DSTs are not MidAmerican's existing DSTs is precisely why MidAmerican would probably seek waivers from its own proposal. That is a recognition of MidAmerican's efforts to draft a comprehensive, statewide proposal that can be customized to fit an individual utility's needs; not any indication of the weakness or inappropriateness of the proposal itself. Nor is it an indication of uncertainty on MidAmerican's part about what the tariffs in its proposal should say.

It is to MidAmerican's credit that it did not simply re-label its existing delivery services tariffs and propose them as the pro forma tariffs in this proceeding. As MidAmerican witness Rea stated, the purpose of MidAmerican's proposal was not to foist MidAmerican's delivery services tariffs upon the rest of the State, or get the Commission to somehow declare MidAmerican's tariffs to be superior to other utilities' tariffs, or to achieve uniformity with as little disruption as possible to MidAmerican.

[MidAmerican Exhibit 3.0 at 7]. Rather than acknowledge MidAmerican's attempts to submit a statewide pro forma tariff that incorporated provisions from other utilities' efforts and which reflected Commission developments since the delivery services tariffs were adopted, Com Ed criticizes MidAmerican's use of its tariffs as the starting point. Com Ed then criticizes MidAmerican's pro forma tariffs because MidAmerican proposes to allow changes to them—including changes MidAmerican itself would propose. Com Ed can't have it both ways. MidAmerican has no doubt that if Com Ed had proposed pro forma tariffs in this case—which it has not done—Com Ed would have submitted its current delivery services tariffs and would have sought to impose them on the rest of the state.

2. Com Ed Claims Its Tariff Should be the Starting Point.

MidAmerican rejects Com Ed's suggestion that the appropriate starting point should be Com Ed's current delivery services tariffs. MidAmerican submits that Com Ed's tariffs should not be the model for uniform tariffs simply because the level of open access activity is higher in Com Ed's service territory. Com Ed witness Clair acknowledged there are a number of factors which would help explain why competition in Com Ed's service territory is more than in other service territories. One reason is Com Ed's rates , compared to the rates in the other utility service territories. [Tr. 480]. Although using Com Ed's current delivery services tariffs as the starting point would, presumably, lessen the administrative burden on Com Ed, it would not lessen the burden on other parties. [Tr. 200-201]. MidAmerican also rejects the notion that Com Ed's customers are so unique that only the use of Com Ed's DSTs would be appropriate for the adoption of pro forma tariffs.

3. Com Ed Claims a Pro Forma Tariff Has Not Been Shown to Enhance Competition.

Contrary to Com Ed's implications, no party to this proceeding has suggested that the absence of a pro forma tariff is the only reason why electric competition has not been more successful in Illinois. MidAmerican readily acknowledges that several factors have contributed to the existing disappointing level of competition in Illinois.¹ MidAmerican notes, however, that several of these additional factors are beyond the apparent jurisdiction of the Commission. MidAmerican submits that the Commission should take appropriate action to remedy the deficiencies in areas where it does have jurisdiction. It is far preferable to enhance competition by taking action in those areas where the Commission can act, rather than sitting back and doing nothing because all contributing factors to the problem cannot be solved. One of these areas, and an area that the Commission has long recognized as being a problem area, is the matter of uniformity of tariffs.

Com Ed claims that the lack of greater uniformity is not an inhibiting factor to competition. MidAmerican submits, however, that the parties in the best position to evaluate the effect of the absence of pro forma tariffs and greater uniformity are not the incumbent utilities, but are, instead, the marketers and customers. Marketers and customers are the ones who must navigate through the maze of non-uniform tariffs. They are the ones most directly affected by the lack of uniformity and who incur the additional expenditures of resources to attempt to overcome the difficulties posed by a lack of greater uniformity—or who decide not to participate in the Illinois market. It is

¹ For example, a need for new generating capacity, development of a robust wholesale market, energy imbalance provisions of open access transmission tariffs, the effects of the reciprocity provision of

important to note that every party in this case that must deal with multiple tariffs supports tariff uniformity and supports, in whole or in part, MidAmerican's proposal. It is difficult, if not impossible, to statistically or financially quantify the benefits to the marketplace of implementing MidAmerican's proposal. It is also difficult, if not impossible, to quantify the costs to utilities of implementing MidAmerican's proposal. The fact that parties in this case who must operate in the Illinois market have taken considerable time, effort, and resources (that cannot be automatically recovered from customers) specifically to support MidAmerican's proposal indicates a strong belief that a pro forma tariff would significantly benefit the Illinois marketplace. The decision to implement a pro forma tariff is ultimately a policy that the Commission must make based on its belief of what is best for the marketplace as a whole, not on what is best for any particular party. MidAmerican believes the evidence in this case clearly demonstrates that its proposal would significantly benefit the Illinois market.

4. Com Ed Claims Other Documents Would Have to be Revised.

As another criticism, Com Ed notes that the implementation plans, supplier handbooks, etc., also vary among the utilities. Apparently, the criticism is that even with the adoption of a pro forma tariff, there will remain some differences among the existing practices of the utilities and the documents with which customers and suppliers must be familiar. MidAmerican submits that differing implementation plans and related documents do not constitute a reason to end the pursuit of greater uniformity. Indeed, such differing implementation plans and related documents may constitute additional impediments to competition which merit additional standardization.

the Customer Choice Law, special contracts and billing experiments, and greater customer eligibility have been cited as additional impediments to competition. [Tr. 608-611].

MidAmerican notes that delivery service implementation plans, specifically, already are required to be consistent with a utility's delivery service tariffs and that the delivery service tariffs control in the event of any inconsistency. MidAmerican presumes that if a pro forma tariff is adopted, utilities would need to revise their implementation plans, supplier handbooks, etc., to reflect the pro forma tariff.

5. Miscellaneous Objections.

Objections were also raised that pro forma tariffs would:

- (a) require massive changes to business practices and systems;
- (b) stifle innovation and creativity;
- (c) be unfair because DSTs have already been approved;
- (d) ignore differences between utilities;
- (e) be too time-consuming to develop and too difficult to implement.

MidAmerican witness Rea addressed each of these concerns:

(a) MidAmerican does not see requiring utilities to adopt common business approaches to be a bad thing. Apparently, Com Ed agrees based on its support of the Uniform Business Practices efforts. [Com Ed Ex. 7.0 at 2]. Further, MidAmerican believes an objective analysis of its proposed tariffs demonstrates that the impacts on business processes brought about by the acceptance of MidAmerican's proposals would be minimal, at worst. It is true that MidAmerican's pro forma tariff proposal might require suppliers and customers to relearn delivery service tariffs, but this seems to be a price suppliers and customers are willing to consider and accept, given their support of MidAmerican's proposal.

(b) MidAmerican does not believe its pro forma tariffs would stifle innovation and creativity on the part of utilities. Utilities would have as much freedom to be creative and innovative as they have today. MidAmerican's proposal allows utilities to file for alternative terms and conditions in specific areas based on individual needs, innovation, and creativity. MidAmerican submits that Com Ed's claims that adoption of MidAmerican's pro forma tariff proposal would stifle creativity and innovation result from a misunderstanding of MidAmerican's proposal. Com Ed witness Juracek testified her understanding of the pro forma regime was if one person or one utility wants to change something, all parties must participate in that effort. [Tr. 712]. This is not the case. MidAmerican carefully crafted its proposal to allow each utility to file for exceptions to the pro forma tariff at any time to recognize individual differences in utility operations.

(c) Approval of a pro forma tariff proposal by the Commission also would not be unfair based on the previous approvals of individual delivery service tariffs. As IIEC witness Stephens noted, tariff changes are to be expected in the early stages of deregulation. Mr. Rea noted that complaints that delivery service tariffs have just been approved by the Commission are based on an old world view of a fairly static bundled service environment where change was slow and the pace fairly relaxed. [MidAmerican Exhibit 5.0 at 40]. Changes will happen quickly in the new competitive marketplace. MidAmerican notes that this proceeding was initiated by the Commission after delivery service tariffs were approved by the same Commission. Using the prior approval of delivery service tariffs as an argument against consideration of uniformity seems to argue against the very existence of this proceeding.

(d) MidAmerican's pro forma tariff proposal does not ignore important differences between individual utilities, nor does it infringe on a utility's ability to tailor tariffs to the specific needs of its customers. MidAmerican's proposal is specifically crafted to allow utilities to seek approval of alternative terms and conditions to a final pro forma tariff based, in part, on important differences between utilities. MidAmerican believes this is a very important aspect of its proposal.

(e) MidAmerican also does not believe that development of a pro forma tariff under MidAmerican's proposal will be too difficult. A draft pro forma tariff has already been prepared and proposed in this proceeding. A thorough analysis of the draft tariffs has also been submitted in this proceeding. Therefore, the parties are already well on the way to development of a pro forma delivery service tariff in Illinois. Further modification can be made within the timeframes proposed by MidAmerican in its proposal. Completion of a final pro forma tariff should not be prohibitively difficult.

VII. ALTERNATIVE PROPOSALS

A. Staff's Proposal.

Staff witness Lazare proposed that utilities reorganize their existing delivery service tariffs according to a common outline. The result of this proposal would be that the utilities' customer tariffs and supplier tariffs would follow the same organization and structure, but retain the existing tariff language. The tariffs would not share common language, but would be organized and structured the same. MidAmerican witness Rea agreed with Mr. Lazare that uniform tariff structures that are logical and understandable would be beneficial to competition. Mr. Rea noted that MidAmerican could support

Staff's proposed outline if it was only an interim step along a well-defined, Commission-ordered path that ultimately led to the development of pro forma delivery services tariffs.

Mr. Rea noted that the Commission could accept both MidAmerican's proposed pro forma tariff proposal and Staff's common outline proposal in this proceeding. Under such an approach, the Commission could order the reorganization of delivery service tariffs according to Staff's outline immediately while accepting MidAmerican's draft templates as the starting point for the development of final pro forma tariffs.

MidAmerican does not, however, support Staff's proposal as the end result in this proceeding. It is an interim step, not a final result, as it cannot achieve the same degree of simplicity and uniformity as adoption of a pro forma tariff. Ameren witness Carls testified Ameren would be receptive to the adoption of a common outline such as that suggested by Mr. Lazare. [Ameren Exhibit 4 at 11]. Mr. Carls noted, however, that with the possible exception of some narrative, the terms and conditions and rules of Ameren's tariffs would not change under that approach. [Tr. 189]. A common outline, without substantive revisions to the tariffs themselves, would simply highlight the lack of uniformity among the utilities' tariffs and not resolve the fundamental issue of the ultimate desirability of pro forma tariffs and uniformity. [MidAmerican Ex. 3.0 at 3-4].

In his rebuttal testimony Staff witness Schlaf agreed that the common outline would merely be a step along the path to a uniform tariff, and proposed a process to develop a pro forma tariff very similar to that suggested by MidAmerican. The main difference in Dr. Schlaf's proposal is that it would not start from an approved "strawman" tariff, but would invite parties to submit proposed starting points. While MidAmerican could support this proposal, MidAmerican believes it would add considerable

unnecessary complexity to the process of tariff development. MidAmerican continues to believe that use of a single starting point tariff will result in the most efficient pro forma tariff development process.

B. Com Ed's Tariff Reorganization and Index Proposal.

In response to the outline proposed by Staff witness Lazare (and, undoubtedly, as a reaction to MidAmerican's proposed pro forma tariffs), Com Ed, Illinois Power, and Ameren proposed a Joint Outline. The remaining incumbent utilities—CILCO, Alliant Energy, MidAmerican, and Mt. Carmel—were, at least initially, not invited to participate. It appears that comments were sought from CILCO, but it does not appear any comments were submitted or incorporated into the Joint Outline. The Utilities offer the Joint Outline as a compromise proposal. While such an outline might provide an interim step towards a pro forma tariff, it is essentially only a repackaging of the Utilities' existing tariffs with a new wrapper and a prettier bow. Ameren supports Com Ed witness Alongi's common index approach. [Ameren Exhibit 4 at 11]. Ameren witness Carls acknowledged that under this approach, a cross-reference might be added to Ameren's existing tariffs, but that the words or substance of the tariffs would stay the way they are now. [Tr. 188]. Again, MidAmerican submits that simply reshuffling the same non-uniform tariffs will not make them more pro-competitive.

C. Illinois Power's Rate Simplification Process.

Illinois Power witness Gudeman stated Illinois Power would implement a "rate simplification process" with the goal being to file "simplified delivery services tariffs as part of the Company's delivery services rate case, on or about June 1, 2001." [IP Exhibit 1.1 at 4]. No details were provided but, as the case progressed, Illinois Power's "rate

simplification process” appeared to gain at least the promise of some substance. In surrebuttal testimony, Mr. Gudeman and Ms. Smith stated Illinois Power intends to meet with internal (Illinois Power) users of its delivery services tariffs and external groups to obtain input. Based on that input, Mr. Gudeman and Ms. Smith stated Illinois Power will rewrite its delivery services tariffs to make them easier to understand. [IP Exhibit 1.5 at 8]. At this time, the proposal remains merely a promise of future action. While it is heartening to hear that Illinois Power acknowledges a need to simplify its delivery services tariffs, whether that simplification will result in substantive changes, or simply the type of “cut and paste” revisions otherwise contained in the outline proposals, remains to be seen. What is known is that Illinois Power’s rate simplification process does not constitute a proposal for the Commission’s consideration in this case and there is no assurance that, even if implemented, it will advance the cause of greater uniformity in Illinois.

VIII. SINGLE BILL OPTION PROPOSAL

MidAmerican witness Kutsunis addressed two related issues concerning the single billing option: (1) Must RESs include prior unpaid balances for bundled service on single bills, and (2) What should be the posting order of single billing remittances (e.g., oldest balance first)? MidAmerican believes it is inappropriate for an RES to be required to bill its customers for unpaid bundled service bills or for delivery service bills owed to another service provider. MidAmerican believes the utility should collect its own unpaid bundled service balances. Ms. Kutsunis testified there were two reasons why this is appropriate. First, MidAmerican does not believe that any RES should be required to become an uncompensated collection agency for the delivery services provider.

Second, requiring an RES to collect charges from a customer that were incurred prior to the customer establishing a relationship with the RES is likely to cause customer confusion, interfere with the RES relationship, and increase RES costs. [MidAmerican Ex. 2.0 at 3]. MidAmerican's proposed solution is that a customer's account be closed out at the time the customer leaves bundled service or switches suppliers and that a new account be established. This would allow the DSP to continue to pursue billing and collection activities for any outstanding bundled balances. It also allows the RES and customer to begin a billing relationship that is not confused or tainted by charges that are not related to that relationship. [MidAmerican Ex. 2.0 at 4-5].

Ms. Kutsunis also testified that MidAmerican believes payments by the RES to the delivery service provider should be applied only to electric delivery services provided to the customer during the RES' term of service with that customer. MidAmerican does not support a posting logic that only allows payments to go to the oldest balance first. Ms. Kutsunis testified there were two primary concerns arising from posting to the oldest balance first. First, there is a significant likelihood of customer confusion. The customer may be very confused to find that payments made to his RES were applied to an outstanding balance with another company incurred prior to the beginning of his relationship with the RES. In addition, when the DSP is a combination or dual fuel utility, the oldest balance owed to the DSP may be for a service other than electricity. If a DSP is allowed to post payments from the RES to the oldest balance and that balance is a gas balance, the RES will be required to become the gas collection agent for the DSP even though the RES provides no gas-related services to the customer. As Ms. Kutsunis noted, the RES would then be in the position of explaining to the customer why payments

to his electric supplier are being used to pay his gas bill, even though he is being billed for those gas services separately by the DSP. [MidAmerican Ex. 2.0 at 5-6].

Ms. Kutsunis recommended that new customer accounts be established for customers that elect a single bill option. The accounts should be for electric service only and should be totally separate from the customer's previous bundled account, previous delivery service account, or gas account. This solution permits the customer and RES to have a clean slate to begin billing for unbundled electric service. [MidAmerican Ex. 2.0 at 6-7].

MidAmerican's proposal for the treatment of unpaid bills is simple and straightforward—unpaid bills should be collected by the entity to whom the debt is owed. If the debt is owed to the bundled utility, then the bundled utility should collect that debt. The utility should not be allowed to impose that duty—in any manner—upon the RES. In a situation where a customer changes RES, if the debt is owed to RES #1, then RES #1 has the responsibility to pursue billing and collection of that debt. It should not be permitted to impose that duty upon RES #2.

The only situation in which an entity to whom a debt for prior service is not owed should be allowed to bill for that debt is where there has been an express agreement between the entity to whom the debt is owed and the successor service provider. This would be on a voluntary, rather than a mandatory or imposed, basis. If the successor entity determines that it will provide such services, it must be compensated for those services, whether that be by an adjustment to the single bill option credit or some other mechanism. MidAmerican notes that utility representatives appeared to agree with the symmetry of providing for such compensation, in the same manner that the single bill

option credit is designed to reflect the fact certain costs are no longer incurred by the utility. [E.g., Tr. 276-277].

A. Legal discussion of Section 16-118(b).

Com Ed and Ameren interpret Section 16-118(b) as authorizing utilities to require retail electric suppliers (RES) to include on their bills to customers unpaid balances for bundled services provided by the utility to the customer before the customer commenced delivery service with the RES.

There is, however, nothing in Section 16-118(b) that even mentions, let alone authorizes, a utility to require a RES to bill its customers for outstanding bundled service balances previously owed to the utility. The utilities will claim that Section 16-118(b) supports their interpretation that a RES must bill for outstanding bundled balances because bundled service is a “tariffed service.” MidAmerican sees no indication that the SBO was intended to require a RES to include outstanding balances for any services provided by other entities prior to the time the RES and the customer entered into their contractual relationship, whether such unpaid previous balances were owed to the utility for bundled service or to another RES for previous delivery service. MidAmerican does not believe it was the intent of the General Assembly that the SBO be used as a catch-all, collection tool for the utility. MidAmerican believes that billing under the SBO is to include two components. The first component is the billing for the services provided by the RES. The second component is the delivery services provided by the utility. Those delivery services are a “tariffed” service within the meaning of Section 16-118(b). Why didn’t the General Assembly use the term “delivery services” instead of “tariffed services”? MidAmerican believes it likely that the General Assembly intended to permit

the utility to bill the customer for any other electric services provided pursuant to filed tariffs during the time the SBO was utilized. MidAmerican does not believe the General Assembly intended the term “tariffed services” to include unpaid bills for bundled service which were incurred prior to competition, or for other non-related “tariffed” services such as gas service.

B. Com Ed’s SBO Tariff .

Com Ed also claims their Commission-approved tariff allows them to require RES to include such balances. Com Ed’s Single Bill Option is contained in its Rider SBO. There are seven obligations imposed upon retail electric suppliers in Rider SBO. [Tr. 520]. Nowhere in any of those seven obligations is there any requirement that the RES bill the customer for unpaid bundled services. Instead, Com Ed interprets its own tariff to include “bundled” services into the definition of delivery services. This is seen by the following exchange:

- Q. [Mr. Fein] Let me ask it this way. Can you please point to anywhere in any of those obligations where it refers to any other charges of Commonwealth Edison other than delivery services charges?
- A. [Ms. Clair] Specifically, the word “charges,” it has “other information,” not “charges.” But it also has “issue bill including charges” which I take to mean including charges for delivery services, doesn’t just say just for delivery services.
- Q. The only specific types of charges that are listed, though, you will agree, are for delivery service charges?
- MR. RATNASWAMY: Again, is this line of inquiry just on this section of the tariff?
- Q. Correct.
- A. Are for delivery services.
[Tr. 523-524].

As the drafter of its own tariff, Com Ed could have chosen to directly include unpaid bundled services, but it did not. Com Ed should not now be permitted to reinterpret its tariff.

On Redirect examination, Com Ed cited the following language in its SBO Tariff in support of its interpretation:

In satisfying RES Continuing Obligation (6) as specified in the Continuing Obligations section of this tariff, the RES shall make an annual selection of one of the two payment options stated therein in accordance with which it shall remit payments due to the Company from each of the Company's retail customers for which the RES is providing billing of the Company's delivery services. Such option, as annually selected by the RES, shall be applicable to all payments due to the Company from all the retail customers for which the RES is providing billing of the Company's delivery services.

Com Ed appears to rely on this language to authorize it to utilize the SBO to collect whatever amounts a customer may owe for whatever services Com Ed provided that customer at any time. MidAmerican submits a more reasonable interpretation—and one that promotes rather than hinders competition—would be to limit Com Ed's collection efforts to those services provided during the time the SBO is utilized. To the extent Com Ed is interpreting its tariff more broadly, it should be directed otherwise.

C. Payment Posting Order.

Com Ed witnesses Meehan and Clair state that Com Ed has been posting payments to the oldest balance first for decades. [Com Ed Ex. 9.0 at 4; Com Ed Ex. 7.0 at 14]. Frankly, MidAmerican is puzzled as to why Com Ed thinks this is justification for continuing a practice which acts as an impediment to the use of the SBO. Does Com Ed believe that once a practice is established, it need not be changed even if the industry is fundamentally restructured? When Com Ed's posting order practice was established

“decades ago,” there was no SBO. Ms. Clair highlights that fact in her surrebuttal testimony. [Com Ed Ex. 7.0 at 15]. It was—and is—inconceivable that another entity should be required to bill for debts owed to Com Ed. Com Ed’s claim that its posting order cannot, or should not, be revised because it predated electric competition should be summarily rejected. MidAmerican’s concerns about Com Ed’s practice are equally applicable to Ameren. [Ameren Exhibit 4 at 2].

D. Illinois Power Practice.

To its credit, Illinois Power does not require a RES to bill outstanding balances incurred for bundled service to a delivery services customer receiving a bill under the SBO. Illinois Power will continue to send a paper bill directly to customers to collect unpaid balances for bundled service that were incurred prior to the customer switching to the RES. [IP Ex. 1.3 at 14].

In addition, Illinois Power witnesses Gudeman and Smith testified that Illinois Power would also continue to send a paper bill directly to customers to collect balances, including outstanding delivery services charges, incurred while the customer was served by a prior RES. In summary, Illinois Power will not require an RES to send a bill to customers for service provided by other companies. [IP Ex. 1.3 at 14]. MidAmerican witness Kutsunis testified that Illinois Power’s methodology achieved the same result as MidAmerican’s proposal to close out each account. [MidAmerican Exhibit No. 6.0 at 2-3].

E. Com Ed and Ameren Practice.

In contrast to Illinois Power’s handling of these bills, are the practices of Com Ed and Ameren. Com Ed requires that the RES offering a SBO must bill for all outstanding

balances owed to Com Ed—even if these balances were created prior to the customer even having a relationship with the RES. Com Ed witness Clair described Com Ed’s position very succinctly:

“A RES must include on the single bill sent to the customer any and all outstanding balances that the customer owes to Com Ed for tariffed services.” [Com Ed Ex. 1.0 at 4].

Ameren’s practice is the same, and any payment received from a RES who has elected the SBO option would be first applied to the oldest outstanding charge regardless of whether that charge is associated with bundled service or delivery service. [Ameren Exhibit 2 at 2].

F. Com Ed’s Alternatives.

Com Ed does state that it is willing to perform an alternative compromise manual “work around” proposal, which would permit outstanding balances for bundled services owed to Com Ed not to be listed on the single bill, provided that Com Ed is allowed to fully recover its costs of implementing and carrying out the “work around” proposal. Com Ed testified they are already performing these manual services for one RES, although that effort requires the use of two full-time employees and a portion of another employee’s time.

Com Ed witness Clair made several proposals to address the SBO billing issue. She characterized her proposals as “compromises.” In reality, however, every proposal made by Ms. Clair highlighted Com Ed’s hostility towards the SBO. Every proposal would have the effect of limiting the availability of the SBO or the number of customers being able to receive service under the SBO:

1-- the RES can elect not to take the SBO (thereby eliminating the SBO);

- 2-- the RES could choose the SBO only for those delivery services customers that do not have an existing bundled services balance (thereby reducing the number of customers benefiting from the SBO option);
- 3-- the RES, as a condition of its agreement to serve as an RES, could require a deposit of delivery services customers as to whom the RES elects the SBO and who have an existing bundled services balance (thereby reducing the number of customers benefiting from the SBO);
- 4-- the RES could wait approximately three months after switching for the customer's bundled services balances to be paid off before placing the customer on the SBO (thereby, at a minimum, delaying the benefits of the SBO to RES and customers).

Ms. Clair states that all of these options make more sense than forcing Com Ed to change its information systems. [Com Ed Ex. 7.0 at 5]. As Staff witness Dr. Schlaf noted, if the Commission determines that Com Ed's interpretation [of Section 16-118(b)] is incorrect, then the types of changes Ms. Clair noted may have to be made. [Staff Exhibit 3 at 4].

In her surrebuttal testimony, Ms. Clair reiterates her direct testimony proposal that Com Ed is willing to allow an RES to revert to dual billing. [Com Ed Ex. 7.0 at 5]. This is also a means of depriving RES and customers of the SBO. Similarly, Ms. Clair's suggestion that Com Ed would consider a proposal to prohibit customers that have outstanding balances owed to Com Ed from being placed on the SBO would deprive RES and customers of that option. The SBO is a statutory offering. RESs and customers should not be deprived of that offering. As Staff witness Dr. Schlaf noted, a utility

should not be the one to decide whether a customer should receive two bills or a single one. [Staff Exhibit 3 at 5].

G. Information System Requirements.

Concerns have been expressed about the ability, and related costs, of information systems to make the changes necessary to implement MidAmerican's SBO proposal. In general, MidAmerican believes that if such systems are not sufficiently flexible to accommodate the inevitable changes that competition will require, then significant changes to those systems may be required.

Certainly, costs need to be taken into consideration as one factor in determining whether a particular change is necessary and promotes competition. Illinois Power has recognized the importance of making changes consistent with MidAmerican's proposal. Illinois Power witness Smith testified that setting up a system to track RES bills separately from other customer bills required a significant amount of effort. The system was so designed because Illinois Power believed suppliers would not believe it was their responsibility to try and collect those balances that had occurred prior to them being involved with that particular customer. [Tr. 258-259].

WHEREFORE, MidAmerican Energy Company requests that the Illinois Commerce Commission issue an Order finding that the currently effective sets of electric utility delivery services tariffs, by virtue of a lack of uniformity, constitute rates that are unjust, unreasonable, discriminatory and preferential. MidAmerican also requests the Commission state that changes should be ordered in the delivery services tariffs of each Illinois electric utility to render such tariffs just, reasonable and sufficient. MidAmerican further requests that the Commission order that the pro forma tariffs proposed by

MidAmerican be adopted as the standard for achieving uniformity among the Illinois utilities' delivery services tariffs. MidAmerican requests the Commission initiate a second proceeding to investigate such revisions to the pro forma tariffs.

MidAmerican also requests that the Commission issue an Order determining that RES are not required to include outstanding balances for previous bundled services owed to a utility on their bills to their customers. MidAmerican further requests a finding that a RES is not required to include in its bills to its customers outstanding previous balances owed to another RES. MidAmerican requests a clarification that billing for such outstanding balances for bundled services and delivery services are the responsibility of the entity to whom the debt is owed, in the absence of an express agreement to the contrary.

Respectfully submitted,

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